

Title	New and amended rules on rulemaking (amend rule 6.20; adopt rules 6.21 and 6.22)
Summary	Rule 6.20 would be divided into three rules addressing different aspects of rulemaking. The proposed amendments would clarify how members of the public and AOC staff may make proposals and would allow for exceptions to the normal process under compelling circumstances.
Source	Rules and Projects Committee
Staff	Melissa Johnson, 415-865-7690
Discussion	<p>The proposed changes would reorganize rule 6.20 into three different rules. These rules address (1) general policies about the council's rule-making process (rule 6.20), (2) information for the public about how to submit a proposal and how the proposal will be handled (rule 6.21), and (3) the procedure by which recommendations reach the council (rule 6.22).</p> <p>A new clause would be added to the first rule, 6.20, stating that the council acts on proposals from advisory committees, internal committees, task forces, and the Administrative Office of the Courts. This is intended to clarify any confusion about whether task forces and AOC staff can submit proposals.</p> <p>The second rule, 6.21, addresses proposals from the public, and includes language now contained in rule 6.20. Minor changes would be made to the current text to clarify the process.</p> <p>The third rule, 6.22, addresses the procedure by which rule proposals get from an advisory committee, task force, or AOC staff, to the council. It incorporates existing provisions in rule 6.20 on the role of the Rules and Projects Committee, and adds a provision requiring all proposals to be reviewed by the Office of the General Counsel. This will help ensure that proposals are legally sound and well-drafted.</p> <p>The last subdivision of proposed rule 6.22 authorizes deviation from the normal procedure under compelling circumstances. It gives the Rules and Projects Committee the flexibility to follow alternative procedures under compelling circumstances, such as when the need to act promptly makes it impossible to follow all of the normal processes. The rule would require the Rules and Projects Committee to document the circumstances and report to the council on the special procedures used.</p>

Attachment	
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## PROPOSAL

Rule 6.20 of the California Rules of Court would be amended, and rules 6.21 and 6.22 would be adopted, effective January 1, 2002, to read:

1 **Rule 6.20. ~~Proposals for new or amended rules, standards, or forms~~**  
2 **Rulemaking process in general.**

3 (a) \* \* \*

4  
5 (b) **[Proposals]** The council will consider proposals that are submitted to it  
6 by an internal committee, advisory committee, or task force, or by the  
7 Administrative Office of the Courts, in accordance with rule 6.22 and  
8 any policies and procedures established by the Rules and Projects  
9 Committee.

10  
11 ~~(b) **[Procedure for submitting proposals]** Any person or organization may~~  
12 ~~submit a proposal for adoption, amendment, or repeal of a rule,~~  
13 ~~standard, or form. An advisory committee or task force may submit its~~  
14 ~~own proposals for changes in rules, standards, or forms to the Rules and~~  
15 ~~Projects Committee. Proposals from other persons or organizations~~  
16 ~~should be submitted in writing to: Judicial Council of California,~~  
17 ~~Attention: General Counsel. Proposals should include:~~

18  
19 ~~(1) The text of the proposed rule, standard, form, or amendment;~~

20  
21 ~~(2) A description of the problem to be addressed;~~

22  
23 ~~(3) The proposed solution and alternative solutions;~~

24  
25 ~~(4) Any likely implementation problems;~~

26  
27 ~~(5) Any need for urgent consideration;~~

28  
29 ~~(6) Known proponents and opponents; and~~

30  
31 ~~(7) Any known fiscal impact.~~

32  
33 ~~(c) **[Advisory committee's review of proposal]** The General Counsel shall~~  
34 ~~refer each proposal from a person or organization (other than an~~  
35 ~~advisory committee) to one of the council's advisory committees for~~  
36 ~~consideration and recommendation. An Administrative Office of the~~  
37 ~~Courts staff member may independently review the proposal and~~

1 present an analysis and recommendation to the advisory committee. The  
2 advisory committee may take one of the following actions:

3  
4 (1) ~~Recommend to the council's Rules and Projects Committee that~~  
5 ~~the proposal be circulated for public comment, either with or~~  
6 ~~without modification, or adopted without being circulated for~~  
7 ~~comment;~~

8  
9 (2) ~~Request further analysis by the proponent; or~~

10  
11 (3) ~~Reject the proposal.~~

12  
13 (d) ~~[Review by Rules and Projects Committee]~~ The Rules and Projects  
14 Committee shall review the advisory committee's recommendation and  
15 may take one of the following actions:

16  
17 (1) ~~Circulate the proposal for public comment;~~

18  
19 (2) ~~If the proposal presents a nonsubstantial technical change or~~  
20 ~~correction or a change that could not conceivably be controversial,~~  
21 ~~recommend that the council adopt it without circulating it for~~  
22 ~~comment;~~

23  
24 (3) ~~Request further analysis by the advisory committee or the~~  
25 ~~proponent;~~

26  
27 (4) ~~Refer the matter to another council committee, the full council, or~~  
28 ~~the Chief Justice; or~~

29  
30 (5) ~~Reject the proposal if it is contrary to statute, conflicts with other~~  
31 ~~rules or standards, or is contrary to established council policy.~~

32  
33 (e) ~~[Review of comments]~~ After a proposal is circulated, the advisory  
34 committee shall review the comments. The advisory committee shall  
35 decide whether to reject the proposal or to recommend that the council  
36 adopt it, with or without modifications.

37  
38 (f) ~~[Submission to council]~~ If the advisory committee recommends that  
39 the council adopt a proposal, the matter will be placed on the council's  
40 agenda. The Rules and Projects Committee shall review the advisory  
41 committee's recommendation and submit its own recommendation to  
42 the council. The council may adopt, modify, or reject the proposal.  
43

1        ~~(g)~~(c)    **[Statewide uniformity]** The council will establish uniform  
2        statewide practices and procedures where appropriate to achieve equal  
3        access to justice throughout California.  
4

5    **Rule 6.21. Proposals from members of the public for changes to rules,**  
6    **standards, or forms.**  
7

8        (a)    **[Application]** This rule applies to proposals for changes to rules,  
9        standards, or forms by a member of the public (any person or  
10       organization other than a Judicial Council internal committee, advisory  
11       committee, or task force, or the Administrative Office of the Courts).  
12

13       (b)    **[Submission and content of proposals]** Proposals must be submitted in  
14       writing to: Judicial Council of California, Attention: General Counsel.  
15       Proposals should include:  
16

17            (1)    The text of the proposed rule, standard, form, or amendment;  
18

19            (2)    A description of the problem to be addressed;  
20

21            (3)    The proposed solution and alternative solutions;  
22

23            (4)    Any likely implementation problems;  
24

25            (5)    Any need for urgent consideration;  
26

27            (6)    Known proponents and opponents;  
28

29            (7)    Any known fiscal impact; and  
30

31            (8)    If known, any previous action by the council or an advisory  
32            committee on the proposal.  
33

34       (c)    **[Advisory committee's review of proposal]** The General Counsel must  
35       refer each proposal from a member of the public to one of the council's  
36       advisory committees for consideration and recommendation. An  
37       Administrative Office of the Courts staff member may independently  
38       review the proposal and present an analysis and recommendation to the  
39       advisory committee. The advisory committee may take one of the  
40       following actions:  
41

42            (1)    Accept the proposal, either as submitted or modified, and proceed  
43            under rule 6.22;

1  
2           (2) Request further information or analysis; or

3  
4           (3) Reject the proposal.

5  
6   **Rule 6.22. Rule-making procedures.**

7  
8   **(a) [Who may make proposals]** A Judicial Council internal committee,  
9           advisory committee, or task force, or the Administrative Office of the  
10          Courts may recommend that the council adopt, amend, or repeal a rule  
11          or standard, or adopt, approve, revise, or revoke a form.

12  
13   **(b) [Legal review]** The internal committee, advisory committee, or task  
14          force, or the Administrative Office of the Courts (“the proponent”) must  
15          first submit its proposal to the Office of the General Counsel for legal  
16          and drafting review. The General Counsel may refer the proposal to an  
17          appropriate advisory committee for review.

18  
19   **(c) [Recommendation to Rules and Projects Committee]** After review by  
20          the Office of the General Counsel, the proponent must submit the  
21          proposal to the Rules and Projects Committee with a recommendation  
22          that it be (1) circulated for public comment or (2) submitted to the  
23          council for approval without public comment.

24  
25   **(d) [Review by Rules and Projects Committee]** The Rules and Projects  
26          Committee must review the recommendation and may take one of the  
27          following actions:

28  
29          (1) Circulate the proposal for public comment;

30  
31          (2) If the proposal presents a nonsubstantial technical change or  
32          correction, or a minor substantive change that is unlikely to create  
33          controversy, recommend that the council adopt it without  
34          circulating it for comment;

35  
36          (3) Request further information or analysis by the proponent;

37  
38          (4) Refer the matter to another council internal or advisory committee,  
39          the full council, or the Chief Justice; or

40  
41          (5) Reject the proposal if it is contrary to statute, conflicts with other  
42          rules or standards, or is contrary to established council policy.  
43

1       **(e) [Review of comments]** After a proposal is circulated, the proponent  
2       must review the comments and decide whether to reject the proposal or  
3       to recommend that the council adopt it, with or without modifications.  
4

5       **(f) [Submission to council]** After reviewing the comments, if the  
6       proponent recommends that the council adopt the proposal, the matter  
7       will be placed on the council's agenda. The Rules and Projects  
8       Committee must review the recommendation and submit its own  
9       recommendation to the council. The council may adopt, modify, or  
10      reject the proposal.  
11

12      **(g) [Compelling circumstances]** The procedures established in this rule  
13      must be followed unless the Rules and Projects Committee finds that  
14      compelling circumstances necessitate a different procedure. The finding  
15      and a summary of the procedure used must be presented to the council  
16      with any recommendation to the council made under this subdivision.